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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,137	11/15/1999	HIROYUKI TAKEUCHI	1232-19	2582

7590 11/07/2002

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EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

29

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TC 29

Office Action Summary	Application No.	Applicant(s)	
	09/440,137	TAKEUCHI ET AL.	
	Examiner	Art Unit	
	Carolyn A Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claims 17-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeMichele (6,160,007 or 6,013,665) for reasons of record.

Applicant argues that the field of the invention is different in the present case relative to that of the references. This is disagreed with. The claims are directed to a fat composition, which is the subject of the DeMichele patents. Applicant argues that the DeMichele fat has a particular utility in enhancing absorption of oil. The present application, in contrast, is directed to a fat that is less accumulated as body fat. This has been considered but is not persuasive because the present application contains product claims. The fact that the

product may have a different utility does not overcome the rejection.

Also the argued features are not a part of the claims. Applicant argues that the reference does not disclose the claimed amount of medium chain fatty acids in the product. Applicant urges that the amount of triglycerides having 2 medium chain triglycerides in it is not shown in the reference. This has been considered but is not persuasive. The reference at Table 1 shows two different ratios of

MCFA to LCPUFA and contemplates other ratios (column 9, lines 8-10). The reference at column 2, lines 28-52 indicates that MCT has an effect of enhancing lipid absorption. With the references before him, one of ordinary skill in the art would be led to use a lower amount of MCT in the fat product in order to limit or control the absorption of fat into the body and also to limit the caloric impact of the fat.

Applicant admits that the reference shows the level of long chained fatty acids at less than 20%.

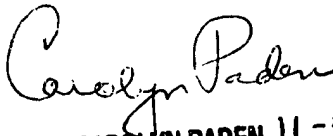
Claims 15-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claimed amounts of fat component ingredients do not add up to 100% and it is unclear what specific fat ingredient is contemplated for about 42% of the composition. It is not seen that short-chained fatty acids are contemplated. Claim 21 cites the use of conventional additives and it is unclear what specific ingredients are included as conventional additives. An amendment to the claims clarifying this issue would overcome the rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CAROLYN PADEN 11-5-02
PRIMARY EXAMINER
GROUP 1300-1761